



**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT**

**PLANNING COMMISSION**

*Promoting the wise use of land*

MEETING DATE October 13, 2016	CONTACT/PHONE James Bergman, Director jbergman@co.slo.ca.us	APPELLANT Craig Merrill	FILE NO. DRC2014-00130
SUBJECT Hearing to consider an appeal by <b>CRAIG MERRILL</b> of a Planning Director's administrative determination to allow an approved golf course to be replaced with a vineyard for the open space associated with Phase 2A of the Woodlands Village, and determination that replacing the golf course with a vineyard substantially conforms with the approved Conditional Use Permit, DRC2014-00130, for <b>MONARCH DUNES, LLC</b> . Phase 2A is located in the southeasterly quadrant of the Woodlands Village between Mesa Road and Eucalyptus Road, approximately 2 miles west of the community of Nipomo, in the South County planning area.			
RECOMMENDED ACTION <ol style="list-style-type: none"><li>1. Deny the appeal by Craig Merrill; and</li><li>2. Affirm the decision of the Planning Director to allow an approved golf course to be replaced with a vineyard for the open space associated with Phase 2A of the Woodlands Village, and determine that replacing the golf course with a vineyard substantially conforms with the approved Conditional Use Permit, DRC2014-00130 based on the findings listed in Exhibit A.</li></ol>			
ENVIRONMENTAL DETERMINATION This administrative determination is not considered a project under CEQA and therefore does require an environmental determination.			
LAND USE CATEGORY Recreation	COMBINING DESIGNATION None Applicable	ASSESSOR PARCEL NUMBER 091-500-019	SUPERVISOR DISTRICT(S) 4
PLANNING AREA STANDARDS: Woodlands Specific Plan			
EXISTING USES: Vacant, under development			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Recreation/single-family residences <i>East:</i> Residential Rural/rural residences <i>South:</i> Residential Rural and Agriculture/rural residences and undeveloped <i>West:</i> Recreation/undeveloped			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: None Applicable			
TOPOGRAPHY: Moderately Sloped		VEGETATION: Grasses, eucalyptus	
PROPOSED SERVICES: Water supply: Woodlands Mutual Water Company Sewage Disposal: Woodlands Mutual Water Company Fire Protection: Cal Fire		ACCEPTANCE DATE: N/A	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

## DISCUSSION

### Background

The subject project for the development of Phase 2A of Woodlands Village was approved by the Planning Commission on January 28, 2016. The approval authorized 242 single-family homes and a nine-hole golf course. The grading plan for development of Phase 2A was approved on March 29, 2016. On July 5, 2016, the applicant, Monarch Dunes LLC submitted a request for a Director's determination that a vineyard (crop production) is an equivalent use to a public golf course in Woodlands Village, and that replacing the approved golf course with a vineyard is in substantial conformance with the approved Conditional Use Permit (CUP), DRC2014-00130.

On August 5, 2016 the Planning Director determined, based on the provisions of Land Use Ordinance Section 22.06.030 and the findings found in Exhibit A that a vineyard is an equivalent use to a public golf course in Woodlands Village, and based on the provisions of Land Use Ordinance Section 22.64.050 and the findings found in Exhibit A that replacing the approved golf course with a vineyard is in substantial conformance with DRC2014-00130.

The Director's determination was appealed on August 14, 2016. Please refer to the appeal information in Attachment 1.

### Authority for Administrative Determinations

The Woodlands Specific Plan states: "Where a proposed use is not specifically listed [in Table 6 of the Specific Plan] the procedures in Section 22.01.041d of the Land Use Ordinance shall be followed." Section 22.01.041d was replaced with Section 22.06.030.C in 2002.

#### Section 22.06.030.C – Allowable Land Uses and Permit Requirements

**C. Uses not listed.** A land use that is not listed in [Table 6 of the Specific Plan] or is not shown in a particular land use category is not allowed, except follows, or as otherwise provided by Section 22.06.040 (Exemptions from Land Use Permit Requirements).

1. Where a proposed land use is not specifically listed in [Table 6 of the Specific Plan], the Director will review the proposed use when requested to do so by letter and, based upon the characteristics of the use, determine whether any of the listed uses is equivalent to that proposed.
2. Upon a written determination by the Director that a proposed unlisted use is equivalent in its nature and intensity to a listed use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what standards affect its establishment.
3. Determinations that specific unlisted uses are equivalent to listed uses will be recorded by the Department, and will be considered for incorporation into this Title through amendment as soon as is practical.
4. At the discretion of the Director, allowable use interpretation requests may be forwarded to the Commission for determination. Determinations by the Director may be appealed to the Commission in compliance with Section 22.70.050.

5. If a proposed use is found by the review authority to not be equivalent to any listed use, the proposed use shall be deemed not allowed.

## Section 22.64.050 – Changes to an Approved Use

An approved land use shall be developed or established only as shown on the project plans approved as part of the permit application, except where otherwise provided by this Section. Deviation of project design or construction from the approved plans, and changes to the project after completion of construction may occur only as follows.

A. Except as provided by following Subsection B., a feature of the use or project subject to the standards of Articles 3, 4, and 5 may be modified, provided that the change requested is in with the standards of this Title. The change shall be requested in writing with appropriate supporting materials and explanation of the reasons for the request. The Director may approve a requested change upon verification of its conformity with this Title, provided that the approval shall not modify the effective date of the land use permit.

B. Where the Director determines that the change results in an increased impact to an aspect of the project, that was specifically addressed in a Negative Declaration or Environmental Impact Report for the project, or the change relates to a project feature that was specifically addressed in conditions of approval of a Minor Use Permit or Conditional Use Permit, or that was a specific consideration by the Review Authority in the approval of a Minor Use Permit or Conditional Use Permit, a new Minor Use Permit or Conditional Use Permit approval shall be obtained.

## **Woodlands Specific Plan**

The Woodlands Specific Plan governs development within Woodlands Village. The Woodlands Specific Plan Objective SPO-6 provides pertinent guidance for these determinations.

SPO-6 – Provide for flexibility in project implementation that will allow for changes in market demand and community-wide needs.

Although the property overall is designated Recreation and golf is a prominent feature by land area, the specific plan clearly states that “while recreation is an important component in The Woodlands development, it is the overall intent of the General Plan to create a new village. This new village, as illustrated in the Land Use Concept Plan [attached], is intended to provide a place to live in a rural resort type setting, as well as a place to work, that could include head of household job opportunities. This specific plan strives to help create a balance between recreation, housing, and employment needs for the planning area and contribute to [the creation of] jobs in the Nipomo Mesa community.”

## **Equivalent Use Determination**

Table 6 of the specific plan identifies the allowable uses for each land use category within the Woodlands Specific Plan. The subject site is in the Recreation-Golf Course (REC-GC) land use category. The following land uses are listed as allowable in the REC-GC category in Table 6:

Accessory offices  
Outdoor sports facilities

Golf club facilities  
Public golf course

Athletic instruction facilities

Public driving range

Personal services

Eating and drinking establishments

Retail uses: food and beverage sales; furniture and home furnishings; and general merchandising

A vineyard (crop production) is not listed in Table 6 of the Woodlands Specific Plan. Where a use is not listed in the allowable use table, the provisions of Section 22.06.030.C of the Land Use Ordinance (LUO) are used. The Director is to review the proposed use when requested to do so by letter and, based upon the characteristics of the use, determine whether any of the listed uses is equivalent to that proposed. The characteristics of the proposed crop production use will be similar to the approved golf course in the following ways:

1. The vineyard will provide an aesthetically pleasing open space for residence and visitors of Woodlands Village to enjoy.
2. Golf courses and vineyards are both intensively managed landscaped features. Management for both includes the use of manual and mechanical work such as trimming, mowing, pruning, watering, weeding, planting, seeding, aerating and the legal and regulated application of chemical inputs such as fertilizers, soil amendments, pesticides, fungicides, and herbicides.
3. The vineyard will be separated from the residential units with a 100-foot landscape buffer, just as the “in-play” areas of the golf course would need to be separated from nearby homes.
4. Irrigation for the vineyard will be required to use the same recycled water sources as the golf course.
5. The vineyards will use less water (32 acre feet per year) than the golf course (104.3 acre feet per year).
6. The vineyard will generate less daily traffic than the golf course.
7. The vineyard development requires less grading than a golf course.
8. The applicant proposes the vineyard be SIP (Sustainability in Practice) Certified, which will help the vineyard meet the same air quality standards that the golf course would have to meet.

Based on the findings listed above, the Director found that the development and operation of a vineyard in the Woodlands Village would be equivalent to the development and operation of a golf course in the Woodlands Village.

### **Change to an Approved Use Determination**

Section 22.64.050.A does not apply to this determination. However, Subsection B does apply. If the Director or Review Authority determines – there has been a change as described in Subsection B, then a new Conditional Use permit would be required.

The Director has determined that there are not any increased impacts addressed in the Addendum to the previously certified 1998 Woodlands Specific Plan Final Environmental Impact

Report (FEIR), and the previously certified 2001 Woodlands Specific Plan Final Supplemental Environmental Impact Report (FSEIR), including but not limited to the following:

1. Water resources - Irrigation for the vineyard will be required to use the same water sources as the golf course. The vineyard will use less water than (32 acre feet per year) the golf course (104.3 acre feet per year).
2. Traffic - The vineyard will generate less traffic than the golf course.
3. Air Quality - The applicant proposes to do less grading for the vineyard than for the golf course. The vineyard is proposed to be SIP (Sustainability in Practice) Certified, which will help the vineyard meet the same air quality standards that the golf course would have to meet.
4. Hazardous materials - Golf courses and vineyards utilize the legal and regulated application of chemical inputs such as fertilizers, soil amendments, pesticides, fungicides, and herbicides.
5. Noise - Golf courses and vineyards are both intensively managed landscaped features. Management for both includes the use of manual and mechanical work such as trimming, mowing, pruning, watering, weeding, planting, seeding, and aerating. Both uses frequently have activities occurring in the early morning and the evening and will face the same cooperative challenges with neighboring uses.

The Director also determines that the proposed change does not affect any of the conditions of approval considered by the Planning Commission, including but not limited to those applicable to tree removal, site development, landscape, water sources (including reclaimed water), road and trail improvements, noise and lighting (including hours of operation), drainage, air quality, green waste, and hazardous materials.

Based on the findings listed above, the Director has determined the proposed change to the approved project to develop a crop production use (grape vineyard) instead of a golf course substantially conforms to DRC2014-00130.

## **Appeal**

The appellant filed the necessary form and paid the appeal fee on August 14, 2016. The appellant followed-up with the additional information in the letter to the Commission found in Attachment 1.

From the Inland Appeal Form, Attachment 1:

The appellant states that Trilogy [the applicant] wants to now change the purpose of its Phase 2A acreage while still building over 220 homes during a stage 4 drought and that the whole project should be stopped until an additional 20 year water certification can be obtained.

**Staff Response:** *The project's CUP was approved by the Planning Commission on January 28, 2016 and the appeal period for the entire project ended on February 11, 2016. This appeal applies to the two Director determinations described above only. The Planning Commission decision in January did not require a 20-year water certification.*

Section 66473.7 of the Government Code requires a water supply verification be done in connection with a subdivision for residential development of more than 500 units. The statute essentially says that it must be shown that a sufficient water supply is available and the mechanism for providing the water to the subdivision is identified. The statute defines “sufficient water supply” as the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection. The Board of Supervisors in 2002 made the required water supply verification. There is no requirement under Government Code Section 66473.7 for subsequent or repeated verifications.

Points raised in the follow-up letter to the Commission:

The appellant’s letter raises many issues or concerns they have with the overall project or other Phases of Woodlands Village. Below, staff includes points raised that are pertinent to the Director’s determinations.

- 1) Grading: The appellant states that the applicant is now grading for homes and a vineyard instead of the approved CUP without any public notification or seeking any input from bordering neighbors who are most affected.

**Staff Response:** *The grading plan approved by the County Public Works Department, on March 29, 2016, is for the residential subdivision and the golf course as approved by the Commission in January. As of September 12, 2016, the Public Works Department verified that grading is in substantial compliance with the County approved project grading plans. The applicant’s engineer estimates that grading for the vineyard would be approximately 219,000 cubic yards less than the golf course.*

- 2) Water:

- The appellant states: “The proposed massive new vineyard will receive water pumped from the aquifer, even if they claim some will be from a non-potable well, as pumping from this same well closer to the ocean will still lower the water table for all of us and more likely allow seawater intrusion.”

**Staff Response:** *It is estimated the vineyard would require a water supply of about 32 acre-feet per year (AFY), whereas, the approved golf course would use an estimated 104.3 AFY. The Director made the determination that a new CUP would not be required to change the open space use from a golf course to a vineyard. Therefore, the conditions of approval for the golf course would apply to the vineyard, and the applicant would have to irrigate the vineyard with the same water source(s) required for the golf course. Condition number 24 of the approved CUP states: “...plans for the golf course will identify that reclaimed water will be utilized as a source to irrigate large landscaped areas.” Condition number 106 states: “An agreement shall be recorded between the golf course operator and the sewer plant operator to take treated water for golf course use....” The operator of the use on the open space area will have the same recorded agreement with the sewer plant operator to use reclaimed water on the open space area.*

*The overall issue of Phase 2A’s impact on groundwater resources, including the irrigation of the open space area, and what mitigation measures should be applied has been decided by the Commission when it approved the project in January.*

*Should the Review Authority determine replacing the golf course with a vineyard would result in increased impact to an aspect of the project, then a new CUP would be required. Staff's conclusion is that there would not be any increase to the impact on groundwater resources because the same water source(s) would be used and the vineyard would use less water than the golf course.*

- The appellant states: "The Commission should place a condition on the developers to pay a bond for the connection [to the Nipomo Community Services District system for supplemental water] to be made in exchange for any future development."

**Staff Response:** *New conditions cannot be added to this determination. A new CUP would be required to add conditions.*

- The appellant states: "The Woodlands project was approved in 2002 based on a 1998 20 year water availability study that runs out in 2018. We urge the Planning Commission to be responsible and demand that an additional 20 year certification be made now before and development can proceed in this time of drought and uncertainty."

**Staff Response:** *The Board of Supervisors in 2002 made the required water supply verification under Government Code Section 66473.7. There is no requirement under Government Code Section 66473.7 for subsequent or repeated verifications. In addition, the Commission cannot add conditions to this determination.*

- 3) Developer Dishonesty: The appellant provides a narrative on public discussions that occurred about the golf course, and the paving of Viva Way (which borders Phase 2A to the east). The narrative includes a description of potential violations of the conditions of approval for the CUP.

**Staff Response:** *While the narrative expresses frustration with applicant, staff did not identify any points pertaining to the Director's determinations to present to the Commission on this item.*

- 4) Equivalent Use: The appellant states: "The director of Planning, Mr. Bergman, feels that changing most of the acreage of the project into a vineyard is equivalent use of land that was approved to be part of a the adjacent golf course community. He feels that essentially changing the neighborhood from a recreational buffer that increases property values into an agricultural use production of grapes and harvesting is equivalent value to homeowners who have invested in homes to be next to and in a golf course community. This is clearly not equivalent and significantly changes the character of the neighborhood and the surrounding property values."

**Staff Response:** *The appellant indicates that the Director's determination factored property values and that it was determined that a vineyard is of equal value to property values as a golf course. The appellant concludes that the vineyard is "clearly not equivalent and significantly changes the character of the neighborhood and the surrounding property values." The Land Use Ordinance requires the Director to base the determination on "the characteristics of the use"; therefore, property values were not considered. Although a vineyard has a different aesthetic than a golf course, the neighborhood adjacent to Woodlands Village has a variety of uses, including agriculture, golf courses, rural residences, and greenhouses. Although one may prefer to live near or*



*have a view of a golf course over a vineyard, neither a golf course nor a vineyard are out of character with the neighborhood and surrounding area.*

The appellant concludes with: "We ask that the County Planning Commission act to fairly treat the neighboring property owners and residents to phase 2A by stopping this project until the drought is over and until the developers are required to have an independent 20 year water certification."

**Staff Response:** *Stopping the entire project is not within the scope of this hearing and the Review Authority cannot add, remove, or amend the conditions of approval for the CUP.*

## **Recommendation**

1. Deny the appeal by Craig Merrill; and
2. Affirm the decision of the Planning Director to allow an approved golf course to be replaced with a vineyard for the open space associated with Phase 2A of the Woodlands Village, and determine that replacing the golf course with a vineyard substantially conforms with the approved Conditional Use Permit, DRC2014-00130 based on the findings listed in Exhibit A.

## **Exhibit A – Findings**

- A. The development and operation of a vineyard in the Woodlands Village would be equivalent to the development and operation of a golf course in the Woodlands Village, based upon the following similar characteristics:
1. The vineyard will provide an aesthetically pleasing open space for residence and visitors of Woodlands Village to enjoy.
  2. Golf courses and vineyards are both intensively managed landscaped features. Management for both includes the use of manual and mechanical work such as trimming, mowing, pruning, watering, weeding, planting, seeding, aerating and the legal and regulated application of chemical inputs such as fertilizers, soil amendments, pesticides, fungicides, and herbicides.
  3. The vineyard will be separated from the residential units with a 100-foot landscape buffer, just as the “in-play” areas of the golf course would need to be separated from nearby homes.
  4. Irrigation for vineyard the will be required to use the same recycled water sources as the golf course.
  5. The vineyards will use less water (32 acre feet per year) than the golf course (104.3 acre feet per year).
  6. The vineyard will generate less daily traffic than the golf course.
  7. The vineyard development requires less grading than a golf course.
  8. The applicant proposes the vineyard be SIP (Sustainability in Practice) Certified, which will help the vineyard meet the same air quality standards that the golf course would have to meet.
- B. There are not any increased impacts addressed in the Addendum to the previously certified 1998 Woodlands Specific Plan Final Environmental Impact Report (FEIR), and the previously certified 2001 Woodlands Specific Plan Final Supplemental Environmental Impact Report (FSEIR), including but not limited to the following:
1. Water resources - Irrigation for the vineyard will be required to use the same water sources as the golf course. The vineyard will use less water (32 acre feet per year) than the golf course (104.3 acre feet per year).
  2. Traffic - The vineyard will generate less traffic than the golf course.
  3. Air Quality - The applicant proposes to do less grading for the vineyard than for the golf course. The vineyard is proposed to be SIP (Sustainability in Practice) Certified, which will help the vineyard meet the same air quality standards that the golf course would have to meet.

4. Hazardous materials - Golf courses and vineyards utilize the legal and regulated application of chemical inputs such as fertilizers, soil amendments, pesticides, fungicides, and herbicides.
  5. Noise - Golf courses and vineyards are both intensively managed landscaped features. Management for both includes the use of manual and mechanical work such as trimming, mowing, pruning, watering, weeding, planting, seeding, and aerating. Both uses frequently have activities occurring in the early morning and the evening and will face the same cooperative challenges with neighboring uses.
- C. The proposed change does not affect any of the conditions of approval considered by the Planning Commission, including but not limited to those applicable to tree removal, site development, landscape, water sources (including reclaimed water), road and trail improvements, noise and lighting (including hours of operation), drainage, air quality, green waste, and hazardous materials.

Attachments:

- 1) Appeal Information
- 2) Graphics –
  - Vicinity Map
  - Land Use Category Map
  - Woodlands Specific Plan Land Use Concept Plan
  - Phase 2A
  - Golf course layout
  - Vineyard layout